

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HIDDEN HILLS MANAGEMENT, LLC,  
and 334TH PLACE 2001, LLC,

Plaintiffs,

v.

AMTAX HOLDINGS 114, LLC, and  
AMTAX HOLDINGS 169, LLC,

Defendants.

AMTAX HOLDINGS 114, LLC, AMTAX  
HOLDINGS 169, LLC, and PARKWAY  
APARTMENTS, LP

Counter-Plaintiffs,

v.

HIDDEN HILLS MANAGEMENT, LLC,  
and 334TH PLACE 2001, LLC,

Counter-Defendants.

No. 3:17-cv-06048-RBL

PLAINTIFFS' MOTION TO SET  
OPTIONS PRICES

NOTE ON MOTION CALENDAR:  
January 10, 2020

MOTION TO SET OPTION PRICES  
(3:17-cv-06048-RBL)

## I. INTRODUCTION AND SUMMARY

Plaintiffs and Counter-Defendants Hidden Hills Management, LLC and 334th Place 2001, LLC and Defendants and Counter-Plaintiffs AMTAX Holdings 114, LLC and AMTAX Holdings 169, LLC (“AMTAX 169”), tried this case to the Court in June of 2019. The Court’s post-trial findings of fact and conclusions of law were issued on July 23, 2019, requiring, among other things, that the parties obtain new third appraisals for each property in order to calculate the final option price (“Option Price”) to purchase the limited partner interest under Section 7.4.J. of each partnership’s limited partnership agreement (“LPA”).

Since that time, the parties have obtained new third appraisals for the Hidden Hills and Parkway properties. Based on those new valuations, Plaintiffs have calculated the Option Prices for each partnership in accordance with the Court’s post-trial findings and conclusions. Plaintiffs have requested that Defendants stipulate to these Option Prices. Defendants would not agree to stipulate, and Plaintiffs therefore file this motion seeking a supplemental order setting the Option Price for each partnership.

## II. FACTUAL AND PROCEDURAL BACKGROUND

In the Court’s post-trial findings of fact and conclusions of law (Dkt. # 116), the Court ruled that with respect to the Hidden Hills partnership “[a]s a remedy in setting the Option Price, a new third appraisal must be obtained to determine the property’s FMV, which shall not take into account the environmental contamination on the property site. The date of value for the new third appraisal shall be June 10, 2019, and the waterfall calculations shall be run from May 31, 2019, the last day of the month closest to June 10.” CL ¶ 10.

With respect to the Parkway partnership, the Court ruled that “[i]f the Novogradac and CBRE appraisers are unable to agree on the Parkway property’s value, a third appraisal shall be promptly obtained pursuant to Section 7.4.J of the LPA. . . . The date of value for the third appraisal shall be January 3, 2018, the date of 334th Place’s exercise of the option, and the waterfall calculations shall be run from December 31, 2017, the date of the 2017 audit.” CL ¶

18. The Court further ordered that “[o]nce the third appraisal is obtained, the GP shall present to AMTAX the revised waterfall, following the calculation methods reflected in Trial Exhibit 168, after which the GP shall have the option to purchase AMTAX’s interest at the Option Price reflected in the revised waterfall presented by the GP.” CL ¶ 20.

Gary Klockenteger MAI, of Kidder Mathews Valuation Advisory Services, was selected to complete the new third appraisals for both Hidden Hills and Parkway. Pritchard Decl. ¶¶ 2-3, Exs. A and B. He issued his appraisal report for Parkway on October 18, 2019, a copy of which is attached as Exhibit A to the accompanying declaration of Scott Pritchard. The appraisal report valued Parkway at \$18,160,000 as of January 3, 2018. *Id.* Mr. Klockenteger issued his appraisal report for Hidden Hills on October 17, 2019, a copy of which is attached as Exhibit B to the accompanying declaration of Scott Pritchard. The appraisal report valued Hidden Hills at \$19,890,000 as of June 10, 2019. *Id.*

After receiving the appraisals, Catherine Tamaro ran new waterfall calculations based on those valuations and consistent with the Court’s post-trial findings and conclusions. *See* Tamaro Decl. ¶ 3, Exs. A, B (waterfall calculations). The waterfall calculations for Hidden Hills resulted in an Option Price of \$7,241,219. The waterfall calculations for Parkway resulted in an Option Price of \$3,347,598. On December 6, 2019, counsel for the Plaintiffs sent a letter to counsel for Defendants seeking to have the new calculations and Option Prices under this Court’s final judgment be memorialized by a stipulation to be submitted to the Court. Pritchard Decl. ¶ 4. On December 18, 2019, Defendants’ counsel responded, declining to agree to stipulate as to the Option Prices. *Id.* Ex. C. Accordingly, Plaintiffs bring this motion.

### III. AUTHORITY AND ARGUMENT

The Court reserved jurisdiction to address any potential future disputes regarding the waterfall calculations or the setting of the Option Price for Hidden Hills and Parkway. CL ¶ 46. Plaintiffs do not believe that any aspect of the new third appraisals for Hidden Hills or Parkway are in dispute given the entry of the Court’s post-trial findings of fact and conclusions of law.

1 Similarly, Plaintiffs do not believe there is any dispute that the waterfall calculations were  
2 completed in a manner consistent with the Court's post-trial findings of fact and conclusions of  
3 law. Defendants have not agreed, however, to stipulate to the Option Prices under this Court's  
4 final judgment. *See* Pritchard Decl. ¶ 4, Ex. C. No reason was provided, except that the parties  
5 have filed cross appeals.

6 After trial, this Court upheld the general partner options under the respective LPAs and  
7 retained jurisdiction as necessary to determine each partnership's Option Price and facilitate the  
8 exercise of the option. Defendants do not appear to dispute that the waterfall calculations  
9 submitted with Ms. Tamaro's declaration are in fact correct under this Court's post-trial findings  
10 and final judgment. Plaintiffs therefore submit that the trial court record should be supplemented  
11 to identify the current Option Prices, which flow directly from this Court's self-executing final  
12 judgment. Entering the attached proposed order memorializing the Option Prices will complete  
13 the record associated with this Court's final judgment, without prejudice to the parties' respective  
14 positions on their cross appeal, and facilitate appellate review. Plaintiffs' motion should be  
15 granted.

#### 16 IV. CONCLUSION

17 For the foregoing reasons, Plaintiffs request that the Court enter the attached proposed  
18 order memorializing the Option Price for each partnership under this Court's post-trial findings  
19 and judgment.  
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1 DATED: December 19, 2019

/s/ Rita V. Latsinova

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of December 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following participants:

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DATED: December 19, 2019.

s/ Eileen McCarty  
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